

REMARKS

The Office action dated August 9, 2007, has been fully considered. Please enter the amendments and consider the following remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested.

Applicants appreciate the thoughtful examination of the application.

Applicants appreciate the Office fully considering the supplied references and for doing a prior art search in order to consider the best available reference(s), and for returning the initialed, signed and dated form 1449's and the 892 indicating such consideration of these references.

Applicants appreciate the Office suggesting a new title, albeit failing to use proper English or be comprehensible.

Applicants respectfully submit that the title accurately reflects the subject matter of the claims. As the summary begins: [d]isclosed are, *inter alia*, methods, apparatus, data structures, computer-readable media, mechanisms, and means for distributing packets and/or packets fragments possibly received out of sequence into an expandable set of queues of particular use in packet resequencing and/or reassembly, which is clearly reflected in the title. Moreover, claim 1 recites limitations of reassembly of a packet whose packet fragments are distributed among a plurality of queues, and enqueueing a packet in a queue that does not have a packet fragment that comes after a the packet fragment already in the queue, as packet fragments can arrive out of order and a queue is first-in-first-out (FIFO), so later fragments must be after an earlier fragment or in a different queue. For at least these reasons, Applicants respectfully submit that the title is appropriate, and conforms with 37 CFR 1.72 and MPEP § 606.

Next, Applicants respectfully traverse the informality rejection. By definition a claim defines the invention being claimed, and therefore, the claim defines what Applicants consider their invention. Key is what Applicants consider the invention, not the Office. See, *Clinical Products* – citation in the Office action as the Office relies on this case in making its § 101 rejections. Applicants further do not agree with the Office's characterization of "the key of invention," nor do Applicants agree that is a proper grounds for objection nor rejection.

Moreover, Applicants request the Office provide authority (i.e., a case citation, MPEP section, Rule or Statute) for its "key of the invention" requirement.

For at least these reasons, Applicants respectfully request the Office withdraw the objection. Moreover, Applicants submit that the Office does not have the authority to *object* to a claim based on the substance of a claim. Rather, 37 CFR § 104(c)(1) states: "[i]f the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable *will be rejected*," (*Emphasis added*). "The refusal to grant claims because of subject matter as claimed is considered unpatentable is called a 'rejection'." MPEP § 706.01. Therefore, Applicants do not believe the Office has the authority to "object" to the substance of claims, but rather must present a proper *rejection* under the Rules and MPEP or allow a claim.

Applicants believe that it is important that the Office act under its authority, and do not believe the Office has the authority to selectively characterize or classify an issue as being an objection as to form when it presents an issue of the substance. An example of a matter of form for which an objection would be made is a dependency of a claim on a rejected claim, if the rejected claim is otherwise allowable. MPEP § 706.01. Moreover, such classification of being either an "objection" or "rejection" affects the substantive stance of the case and limits Applicants' response, and further clouds the issue of whether is subject to review by the Board of Patent Appeals and Interferences or only petitionable to the Director of the USPTO.

For at least the reasons that all independent claims define the invention claimed, and an objection to the substance of a claim is not proper, Applicants respectfully request the objections to the claims be withdrawn.

Applicants respectfully traverse the § 112, first paragraph rejections as no claim recites a negative limitation. Additionally, all claims are rejected as being improper method claims, but claims 13-19 are apparatus claims. Moreover, the Office action fails to provide a proper rejection as it fails to state the language that it considers offensive. For at least these reasons, Applicants respectfully request all § 112 rejections be withdrawn.

Next, Applicants respectfully traverse all § 101 rejections, as all claims comply with 35 USC § 101. Applicants suggest the Office read the claims at issue in the cases on which the Office relies, as they are clearly distinguishable. Claim 41 in *Clinical Products* was: "The use as sustained release therapeutic agent in the body of ephedrine adsorbed upon polystyrene sulphonic acid." Claims 1 and 12 in *Ex parte Dunki* are as follows: 1. A vehicle brake part subjected to stress by sliding friction, consisting of a high-carbon, austenitic iron alloy having a proportion of free carbon. 12. The use of a high carbon austenitic iron alloy having a proportion of free carbon as a vehicle brake part subject to stress by sliding friction." In contrast, each pending independent method claim in the present invention recites a series of steps or operations; and the statement of the rejection makes no sense in the context of the apparatus claims. For at least these reasons, Applicant request all § 101 claim rejections be withdrawn.

Next, all claims stand rejected under 35 USC § 103 as being unpatentable over Thibodeau et al., US Patent Application Publication US 2003/0112757A1, in view of Khotimsky et al., US Patent 6,788,868.

The burden is on the Office Action to establish a *prima facie* case of obviousness, and obviousness under 35 USC § 103(a) requires "the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." MPEP § 706.02(j) (*citing In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991))(emphasis added).

Applicants respectfully traverse the rejections a proper rejection requires that the prior art of record teach each and every claim limitation.

First, the Office examines claims 13-19, and then states that the other claim "contain identical limitations set forth in claims 13-19. Applicants respectfully traverse this statement, as all claims do not contain the same limitations.

Turning to independent claim 9, and its dependent claims 10-12, independent claim 9 recites a limitation of sequence numbers for use as recited in resequencing packets. The Office

action fails to address these limitations, and therefore, by definition, fails to present a *prima facie* rejection. Moreover, Applicants respectfully submit that these limitations are neither taught nor suggested by the prior art of record. For at least these reasons, Applicants request the rejections of claims 9-12 be withdrawn.

Turning to independent claim 20, and its dependent claims 21-27, independent claim 20 recites a limitation that packet fragments cannot be enqueued in a queue that contains a fragment of a subsequent packet in the order of the stream of packets. Additionally, claim 22 recites the limitation of identifying that no queue in the plurality of queues does not already have enqueued a packet fragment in the particular queue which comes after the particular packet fragment in the packet or a packet fragment of a packet subsequent to the packet, and in response, expanding the plurality of queues by adding the particular queue to the plurality of queues. The Office action never addresses these limitations, and therefore, by definition, fails to present a *prima facie* rejection. Moreover, Applicants respectfully submit that these limitations are neither taught nor suggested by the prior art of record. For at least these reasons, Applicants request the rejections of claims 9-12 be withdrawn.

Independent claims 1 and 13 recite similar, but different limitations as one is a method claim and one is an apparatus claim. In general, independent claims 1 and 13 are amended herein with support provided at least by FIGs. 3A-B, and the discussion on pages 19-21 of the original disclosure. More specifically, FIG. 3A illustrates a loop (process blocks 302-316) for acquiring a plurality of packet fragments and adding them to a plurality of queues. Originally, these independent claims basically recited a pass through the loop for a single packet fragment. Additionally, claim 13 is amended to add continuity that the reassembly is performed based on the indications added to the data structure identifying the order of the queues determined in loop previously discussed herein, with support provided at least by process block 342 and 348 of FIG. 3B. Additionally, the "at least when the queue is not empty" limitation is changed to be "when the queue is not empty" for draftsman's preferences, with support provided at least by process block 308 of FIG. 3A. Additionally, dependent claims 3, 4, 15 and 17 are amended herein to

adjust language to conform to the updates to their respective independent claims. Finally, dependent claims 5, 6 and 18 are cancelled herein without prejudice.

In regards to the claim rejections of independent claim 13, and its dependent claims 14-17 and 19, Applicants respectfully traverse the rejections, especially in light of the claim amendments which include the loop to describe the operations associated with a plurality of packet fragments, as the prior art of record neither teaches nor suggest all of the recited claim limitations including determining the queue to add a packet fragment, including checking that the particular queue does not have a subsequent packet fragment in the particular queue already. The prior art of record neither teaches nor suggests such a limitation, and the Office action fails to present a proper teaching in the prior art of record. For at least these reasons, independent claim 13 and its dependent claims 14-17 and 19, as well as corresponding method claims including independent claim 1 and dependent claims 2-4 and 7-8 are believed to be allowable.

For at least these reasons, the Office action (a) fails to present a *prima facie* rejection of any pending claim; and (b) the prior art of record neither teaches nor suggests all the recited claim limitations of any pending claim. Moreover, assuming the Office action complies with MPEP § 706 and 37 CFR 1.104(c)(2), then the Office cited the best prior art references available. As the best prior art references available neither teaches nor suggests all the claim limitations of any pending claim, then all pending claims are believed to be allowable over the best prior art available, and Applicants request all rejections be withdrawn, all pending claims be allowed, and the application be passed to issuance.

Final Remarks. In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicant requests any and all rejections and/or objections be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicants are open to discussing, considering, and resolving issues.

Applicants request a two-month extension of time is required. Should a different extension of time be deemed appropriate, Applicants hereby petition for such deemed extension of time. Applicants further authorize the charging of Deposit Account No. 501430 for any fees that may be due in connection with this paper (e.g., claim fees, extension of time fees) as required in addition to the payment made herewith using EFS-Web.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By



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